

IN THE
United States
Court of Appeals
for the Ninth Circuit

CHESTER GUTH

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee

PETITION FOR REHEARING

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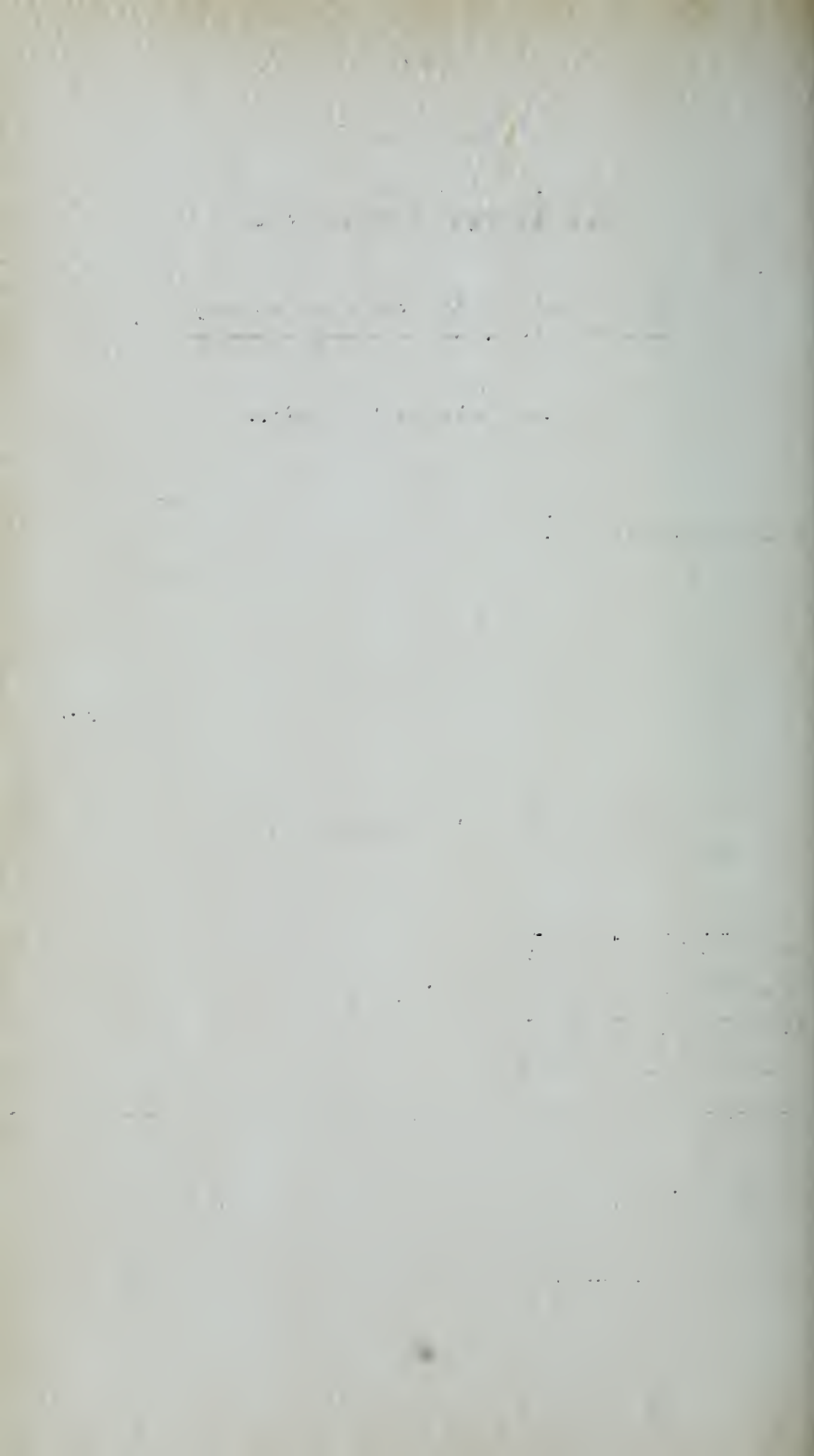
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..... **PAUL P. O'BRIEN, CLERK**

Clerk





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TO THE HONORABLE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT, AND
TO THE JUDGES THEREOF:

Appellant respectfully petitions this Court for a rehearing of the decision filed in this matter on February 14, 1956. Appellant urges that this petition be granted for the following principal reasons:

(1) The Court erred in grounding its decision as to whether or not there was Federal jurisdiction on

an admission of appellant's counsel in oral argument that the land in question is located in "Indian Country" within the meaning of 18 U.S.C. Section 1151.

Contrary to all the objections of record in the District Court and to the Specifications of Error in counsel's printed brief and argument therein, this Court conferred jurisdiction on the lower court by an erroneous concession of counsel in oral argument on appeal. In this connection appellant calls to the court's attention that counsel of record for defendant in the lower Court was Jerry J. O'Connell, who died on January 16, 1956, of a heart attack. He was buried on January 19, 1956. The date set for hearing of argument in this Court was February 7, 1956. Counsel who appeared before this Court on that date was the law partner of the deceased prior counsel, and because of the tremendous work-load upon him he was unable to adequately prepare himself for the argument or to adequately acquaint himself with the record in the lower court and the law on which the grounds for appeal was based. Particularly, counsel who argued the case on appeal assumed that the record showed that the land on which the offense is alleged to have occurred was land on which a patent had at one time been issued. The record is completely bare of any such evidence. The only thing the record shows is that the land was acquired by tax deed from Glacier County, Montana, without any reservation of any Federal jurisdiction over the land.

Certainly before Federal Jurisdiction can exist the

facts upon which it is based must be proven. To confer Federal jurisdiction by admission of inept, unprepared, nay ignorant counsel in oral argument on appeal only seems to emphasize in the mind of the appellant the want of jurisdiction. It constitutes an avoidance of a legal question that must be determined sooner or later, and appellant would prefer it now.

It is respectfully submitted that before the Federal jurisdiction could be established in this case that the record must affirmatively show that the land on which the alleged offense occurred was land on which a patent had issued. The only evidence in the record is that the defendant owns the land by tax title from Glacier County, Montana, without any reservation whatever in the United States Government.

For the foregoing reason it is respectfully urged that the Court grant this Petition for Rehearing.

JOHN M. McCARVEL

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that he has prepared this Petition for Rehearing and that the grounds therein stated are in his opinion well founded and that this Petition is not filed for reason of delay.

JOHN M. McCARVEL,

305 Barber-Lydiard Bldg.

Great Falls, Montana

Attorney for Appellant

